MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ANOR.

v.

MOHD. ZAMBRI MOHD. ARIFFIN

SUPREME COURT, KUALA LUMPUR
HASHIM YEOP SANI CJ
HARUN HASHIM SCJ
GUNN CHIT TUAN SCJ
[CRIMINAL APPEAL NO. 05-9-89]
28 SEPTEMBER 1989

CRIMINAL PROCEDURE: *Habeas Corpus - Detention under Emergency (Public Order and Prevention of Crime) Ordinance 1969 - Drug trafficking activities - Specific legislation for preventive detention of drug traffickers - Dangerous Drugs (Special Preventive Measures) Act 1985 - Whether detention lawful under the 1969 Ordinance - Issue of wrong legislation not raised in habeas corpus application.*

The respondent, who was involved in drug trafficking activities, was detained under s. 3 of the Emergency Ordinance 1969 pursuant to a detention order under s. 4(1) thereof. The detention was necessary to prevent the respondent from acting in any manner prejudicial to public order. The respondent was set at liberty on an application for writ of *habeas corpus*. The learned High Court Judge was of the view that detention under the Emergency Ordinance 1969 was improper as there was specific legislation for detention of drug traffickers under the Dangerous Drugs (Special Preventive Measures) Act 1985. The issue of wrong legislation was not raised in the *habeas corpus* application and no arguments was led on this issue before the learned Judge. Further, the learned Judge's attention was not drawn to s. 25 of the Dangerous Drugs (Special Preventive Measures) Act 1985, which stipulates *inter alia*, that detention of drug traffickers under the Emergency Ordinance 1969 is not prohibited.

Held:

[1] The learned Judge had erred in law when he ordered the release of the respondent on the ground that the wrong legislation had been used, as this ground was never raised in the application nor was it relied upon by his Counsel.

[2] Drug trafficking activities are prejudicial to public order and the Emergency Ordinance 1969 can be used for the detention of any person involved in drug trafficking.

[3] If the provisions of s. 25 of the Dangerous Drugs (Special Preventive Measures) Act 1985 were brought to the learned Judge's attention, he would have concluded that detention under the Emergency Ordinance is applicable to any person associated with any drug trafficking activity.

[Appeal allowed. Order of release set aside.]

Cases referred to:

Rahimtoola v. Nizam of Hyderabad & Anor. [1958] AC 379

Re PE Long @ Jimmy & Ors.; Long & Ors. v. Menteri Hal Ehwal Dalam Negeri Malaysia & Ors. [1976] 2 MLJ 133

Re Application of Tan Boon Liat @ A. Allen; Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors. [1976] 2 MLJ 83

Legislation referred to:

Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 2, 25

Emergency (Public Order and Prevention of Crime) Ordinance 1969, ss. 3, 4(1)

For the appellants - Ng Aik Guan, DPP
For the respondent - Lim Him Wee; M/s. Chong, Poh & Lim

JUDGMENT

Gunn Chit Tuan J:

The public prosecutor of Malaysia on behalf of the Menteri Hal Ehwal Dalam Negeri Malaysia and the Penguasa Kanan Penjara II, Pusat Pemulihan, Batu Gajah, had appealed against the decision of the High Court given at Ipoh on 31 December 1988, whereby the application of one Mohd. Zambri bin Mohd Ariffin (the respondent) for a writ of *habeas corpus* was allowed and the respondent was set at liberty.

The respondent had been detained on 28 June 1988, under s. 3 of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (the Ordinance). The detention order under s. 4(1) of the Ordinance was issued by the Menteri Hal Ehwal Dalam Negeri Malaysia on 26 August 1988, after he was satisfied from the case file containing the relevant reports and information on the conduct and activities of the respondent that he had been actively engaging himself in continuous activities relating to or involving the trafficking of dangerous drugs since August 1985, and that his detention was necessary with a view to preventing him from acting in any manner prejudicial to public order.

Having considered the arguments, the authorities and the affidavits filed in the application, the learned Judge was of the view that since the grounds for detention and the supporting affidavits have stated that the respondent was a trafficker in dangerous drugs which activity has resulted in the increase in criminal activities related to violence and that consequently he had acted in a manner prejudicial to public order, those grounds for detention did not actually fall within the scope and ambit of the Ordinance. The learned Judge considered that where there is a specific legislation for the preventive detention of persons associated with any activity relating to or involving the trafficking in dangerous drugs, namely, the Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act) it was not proper for the detaining authority to apply the Ordinance which was meant for preventive detention for securing public order, the suppression of violence and the prevention of crimes involving violence.

Unfortunately there were no arguments on this point before the learned Judge and hence the main ground of appeal of the public prosecutor was that:

> the learned Judge had erred in law and in fact when he directed for the release of the respondent on the ground that the wrong legislation had been used in that this ground was never raised in the respondent's application nor relied on by his Counsel in his submissions at any point of time before the Court.

The learned Deputy began his address by referring to the judgment of the House of Lords in *Rahimtoola v. Nizam of Hyderabad & Anor*. [1958] AC 379, 398 in which the Law Lords had stated that "We must not be taken as assenting to the views of Lord Denning upon a number of questions and authorities in regard to which the House has not had the benefit of the arguments of Counsel or of the judgments of the Courts below."

Similarly, the learned Deputy urged us to disregard the views of the learned Judge on this point on which he did not have the benefit of the arguments of Counsel. Then the learned Deputy referred to the following section of the Act which was not brought to the attention of the learned Judge:

> 25. For the avoidance of doubt it is hereby declared that nothing contained in this Act shall in any manner whatsoever derogate from the provisions of the Ordinance in its application to any person who has been or is associated with any activity relating to or involving the trafficking in dangerous drugs under the Dangerous Drugs Act 1952.

He also referred to the following definition of the expression "Ordinance" in s. 2 of the Act:

> "Ordinance" means the Emergency (Public Order and Prevention of Crime) Ordinance 1969;

It was therefore his submission that the learned Judge would not have erred if his attention had been brought to the above sections of the Act.

The learned Deputy also referred to *Re PE Long @ Jimmy & Ors.; PE Long & Ors. v. Menteri Hal Ehwal Dalam Negeri Malaysia & Ors*. [1976] 2 MLJ 133 in which Arulanandom J (as he then was) had held in the High Court at Penang that the preamble of the Emergency (Public Order and Prevention of Crime) Ordinance 1969, declared that it was passed for securing public order, the suppression of violence and the prevention of crime involved in violence and although the preamble is not part of the Ordinance one can look into it to understand the scope of the Ordinance. It was clear that securing public order covers suppression of crimes which endanger the safety of the people and cause harm to society. Detention of persons found to be trafficking in drugs was therefore well within the scope of the Ordinance as it was a notorious fact that the trafficking in drugs causes serious harm and destroys the body politic not only nationally but also internationally.

Reference was also made to *Re Application of Tan Boon Liat @ A. Allen; Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors*. [1976] 2 MLJ 83 in which Abdoolcader J (as he then was) had also in the High Court at Ipoh held that it was abundantly clear that trafficking in drugs as a member of international drug distribution syndicate which was the ground on which the order of detention against the applicant was made strikes at the very core of public order and any person indulging in such activities must necessarily be acting in a manner prejudicial to public order. We would respectfully agree with the views of those learned Judges expressed in the High Court and also consider that the Ordinance can be used for the detention of any person involved in the trafficking of dangerous drugs.

In his reply Mr. Lim, Counsel for the respondent, merely submitted that only issues of facts were concerned in this case. He however conceded that he had nothing to add to what the learned Deputy had submitted on s. 25 of the Act.

In any case we are of the view that if the above quoted s. 25 of the Act had been brought to the attention of the learned Judge during arguments before him in the High Court, he would have come to the conclusion that the enactment of the Act does not affect the provisions of the Ordinance which could still be applied to any person who has been associated with any activity relating to or involving the trafficking in dangerous drugs. Section 25 of the Act sought to declare, for the avoidance of doubt, that the provisions of the Act shall not derogate from the provisions of the Ordinance in its application to any person associated with any activity relating to or involving the trafficking in dangerous drugs under the Dangerous Drugs Act 1952. That section was also to have retrospective effect as from the commencement of the Act on 15 June 1985, but without prejudice to the operation of certain amendments sought to be introduced into the Act in relation to persons who have been detained or restricted under the Ordinance.

For the reasons stated above we therefore allowed the appeal and set aside the order of the learned Judge who had ordered the issue of a writ of *habeas corpus* and had directed the release of the respondent.

Also found at [1990] 1 CLJ 223